

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

SCOTTIE L. SCOTT,

Plaintiff,

vs.

STATE OF IOWA, AARON K.
HAWBAKER, KATHRYN J.
MAHONEY, CORY J. GOLDENSOPH,
and BLACK HAWK COUNTY,

Defendants.

No. C11-17

ORDER

This matter is before the court on plaintiff's Application to Proceed in Forma Pauperis, filed February 11, 2011, and his Motion to Appoint Counsel, filed February 16, 2011. Application to Proceed in Forma Pauperis granted; Motion to Appoint Counsel denied. Dismissed.

Plaintiff brings this action seeking damages for the alleged deprivation of his constitutional rights pursuant to 42 USC §1983. The court has jurisdiction pursuant to 28 USC §1331.

Based on the application and certificate of inmate account, in forma pauperis status shall be granted. 28 USC §1915. The Clerk of Court shall be directed to file the complaint without prepayment of the filing fee. Given his current financial status, plaintiff shall be required to submit an initial partial filing fee of \$21.58, and shall thereafter submit monthly payments of 20 percent of the preceding month's income credited to his inmate account until the \$350.00 filing fee is paid. 28 USC §1915(b)(1)(B). The agency having custody of plaintiff shall forward payments from his inmate account to the Clerk of Court each time the amount in the account exceeds \$10 until the filing fee is paid. 28 USC §1915(b)(2).

Plaintiff, presently confined at the Anamosa State Penitentiary, Anamosa, Iowa, brings this action challenging matters arising from his criminal prosecution, including the trial information, the state district court's resolution of criminal matters, and claimed ineffective assistance of counsel.

To the extent plaintiff plaintiff seeks damages arising from an unlawful conviction, a cause of action does not arise under 42 USC §1983 until "the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by an authorized state tribunal..., or called into question by the issuance of a writ of habeas corpus." Heck v. Humphrey, 512 US 477, 486 (1994). No demonstration having been made as to invalidity of the conviction, this action shall be dismissed.

It is therefore

ORDERED

Application to Proceed in Forma Pauperis granted in accordance herewith.

Motion for Appointment of Counsel denied.

Dismissed.

March 31, 2011.



Edward J. McManus, Judge
UNITED STATES DISTRICT COURT

TO: WARDEN/ADMINISTRATOR
Anamosa State Penitentiary
Anamosa, Iowa 52205

NOTICE OF COLLECTION OF FILING FEE

You are hereby given notice that Scottie L. Scott, #6524733, an inmate at your facility, filed the following lawsuit in the United States District Court for the Northern District of Iowa: Scott v. Iowa, *et al.*, Case No. C11-17-EJM. The inmate was granted in forma pauperis status pursuant to 28 U.S.C. § 1915(b), which requires partial payments of the \$350.00 filing fee. Plaintiff has been assessed an immediate partial filing fee of \$21.58, which you shall forward to the Clerk of Court forthwith. 28 U.S.C. § 1915(b)(1). Additionally,

. . . [the plaintiff] shall be required to make monthly payments of 20 percent of the preceding month's income credited to [his] account. The agency having custody of the [plaintiff] shall forward payments from [his] account to the clerk of court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). You must monitor the account and send payments to the Clerk of Court according to the system provided in 28 U.S.C. § 1915(b)(2).

Please make the appropriate arrangements to have these fees deducted and sent to the court as instructed.

KJorgensen

Deputy Clerk

Robert Phelps
U.S. District Court Clerk
Northern District of Iowa